

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 511 of 1988

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MAGANBHAI RAMBHAI PATEL

Versus

KANTIBHAI MAGANBHAI NAIK

Appearance:

MR PM DAVE for Petitioners
MR VM DHOTRE for Respondent No. 1
NOTICE SERVED for Respondent No. 3
MR ST MEHTA APP for Respondent No. 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/09/2000

ORAL JUDGEMENT

The petitioner before this Court is the complainant in criminal case no. 1899 of 1984. The petitioner challenges the judgment and order dated 15th

July, 1988 passed by the learned Addl. Sessions Judge, Nadiad in criminal appeal no. 52 of 1987 in respect of the disposal of Rs. 19,300/= being the muddamal articles.

The complainant at the relevant time was the Cashier in Ram Krishna Seva Mandal, while the accused Kantibhai Naik was serving as a Peon. It was alleged that on 24th March, 1984, the peon from the Anand High School had given Rs. 20,000/= to the cashier for keeping in safe-custody which was kept in a safe in the office of the Mandal. On 29th March, 1984, the said peon came to collect the sum of Rs. 20,000/=: however, on opening the safe, the said sum of Rs. 20,000/= was found to be missing. Upon inquiry, it was learnt that the accused Kantibhai had opened the office at 9.30, the previous evening. It was, therefore, alleged that the accused Kantibhai had stolen the aforesaid Rs. 20,000/=. Pursuant to the complaint, police had caused the investigation. In course of investigation, a sum of Rs. 19,300/= was recovered from the possession of one Kabhai Laxmanbhai Naik, the brother-in-law of the accused and a sum of Rs. 100/= was recovered from the witness Maganbhai Mathurbhai. It was alleged that the amount recovered from the aforesaid two witnesses was the money stolen from the office of the Mandal. The learned Judicial Magistrate, First Class, Anand under his judgment and order dated 6th November, 1987 convicted the accused under charge of the offence punishable under Section 381 IPC and sentenced him with R.I. for one year and a fine of Rs. 2,000/=; in default of the payment of fine, a further sentence of R.I. was imposed. The sum of Rs. 19,400/- [the muddamal article] recovered from the two witnesses was ordered to be paid to the complainant. Feeling aggrieved, the accused preferred Criminal Appeal No. 52 of 1987 before the Sessions Court at Nadiad. The learned Addl. Sessions Judge, under his judgment and order dated 15th July, 1988, reversed the finding of guilt recorded against the accused and acquitted the accused of the charge. The sum of Rs. 19,400/= recovered from the witnesses [the muddamal article] was ordered to be paid to the concerned witnesses from whom the same were recovered. Feeling aggrieved, the complainant has preferred the present revision and has claimed that the sum of Rs. 19,400/= [the muddamal article] shall be handed over to the complainant.

In my view, the present revision for recovery of the muddamal article alone without challenging the order of acquittal of the accused is not maintainable inasmuch

as unless the complainant proves that the muddamal article is the same which was stolen from the safe of the Mandal, the complaint cannot have a claim over it. Once the accused is acquitted and is held not to have stolen the alleged amount, the muddamal articles recovered from his relatives cannot be said to be the stolen money and since the accused is acquitted, the money recovered from the witnesses should be handed over to the persons from whom they were recovered. In my view, the learned Addl. Sessions Judge, Nadiad was right in directing handing over of the muddamal articles to the persons from whom they were recovered. Besides, the learned Addl. Sessions Judge is also right that the accused could not have been convicted on the presumptions and conjectures. The complainant had not proved the receipt of sum of Rs. 20,000/= by him as alleged nor was it proved that by some way, the keys of the safe had found its way to the accused ie., it was an admitted fact that keys of the safe used to remain in the possession of the complainant. The safe was not broken open by any body nor was it proved that the accused had an access to the keys to the safe. The identity of the currency notes was also not established. Besides, the witnesses had explained the possession of muddamal articles by them. The witness Kabhai Laxmanbhai, the brother-in-law of the accused had deposed that to meet the expenses of marriage of his son, he had sold two buffaloes for which he had received a sum of Rs. 9000/= by way of sale proceeds. A sum of Rs. 10,000/= was received by him from the bride's parents as dowry and some money he had received by gift in marriage of his son. Thus, even after the marriage expenses, a sum of Rs. 19,300/= remained on his hands.

In any view of the matter, the acquittal of the accused having become final, the muddamal money cannot be said to be the stolen money and the complainant cannot have a claim over it.

Revision Application is dismissed. Rule is discharged. Interim relief is vacated. The muddamal money - Rs. 19,300/= recovered from witness Kabhai Laxmanbhai Naik shall be returned to him and the muddamal money - Rs. 100/= recovered from witness Maganbhai Mathurbhai shall be handed over to him immediately. Pursuant to the complaint lodged on 29th March, 1984, pending investigation, on 31st March, 1984, the complainant had made an application for recovery of the muddamal. By order made on the same date, the learned Judicial Magistrate, First Class, Anand had ordered to hand over the sum of Rs. 19,400/= to the complainant on his executing a bond in the same amount. Pursuant to the

said order, the muddamal money ie., Rs. 19,400/= had been handed over to the complainant by the concerned Police Sub-Inspector on 31st March, 1984. It is, therefore, directed that complainant shall remit the sum of Rs. 19,300/= being the muddamal money to the witness Kabhai Laxmanbhai from whom the said money was recovered. Complainant will also remit a sum of Rs. 100/= to the witness Maganbhai Mathurbhai from whom the said money was recovered. Such remittance shall be made within a period of four weeks from today.

Prakash*